UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO.: 1:16-cr-10350-RGS

UNITED STATES OF AMERICA,

v.

WALLINGTON GARCIA,
Defendant.

DEFENDANT'S MOTION FOR REVIEW OF MAGISTRATE JUDGE'S DETENTION ORDER

NOW COMES the defendant, Wallington Garcia ("Garcia"), and files his Motion For Review of the Magistrate Judge's Detention Order and in support of the within Motion, States as follows:

I. INTRODUCTION

Defendant Garcia moves this Court to revoke the Order entered by United States Magistrate Judge David H. Hennessy on January 27, 2017 detaining Garcia without bond and to grant Defendant Garcia a hearing for bond pursuant to 18 U.S.C. Section 3145.

II. PROCEDURAL BACKGROUND

On December 8, 2016, Garcia was charged with Conspiracy to Attempt to Possess with Intent to Distribute Cocaine. Defendant Garcia has been charged with violation of 21 U.S.C. Section 846.

The government moved for detention on December 13, 2016. A detention probable cause hearing was held on January 27, 2017 by the Magistrate Judge David H. Hennessy. The court found probable cause and ordered the defendant to be detained.

III. AUTHORITIES

In reviewing a magistrate judge's detention order, the court must take an independent review, giving due deference to the magistrate judge's decision as warranted. U.S. v. Tortora, 922 F.2d 880 (1st Cir. 1990), U.S. v. Simone, 317 F.S. 2d 38 (D.Mass. 2004). With regard to the risk of flight, the government must prove by a preponderance of the evidence that no combination of conditions will reasonably assure the defendant's appearance at future court proceedings. U.S. v. DiGiacomo, 746 F.S. 1176 (D. Mass. 1990). With regard to danger, clear and convincing evidence is required to establish the facts relied upon to support a finding that no combination of conditions will reasonably assure the safety of any other person or the community. 18 USC Section 3142 (f), DiGiacomo, supra. Only reasonable assurances, rather than guarantees, are required with regard to both safety of the community and risk of flight. Simone, supra. In determining whether suitable conditions exist, a judicial officer must take into account the following factors: the nature and circumstances of the offense; the weight of the evidence; the defendant's criminal history; and the nature of the gravity and danger. Tortora, supra at 884. In giving due deference to the magistrate judge, the court must determine whether the defendant has been properly classified relative to the risks of danger and flight and, if so, whether the contemplated conditions of release sufficiently ameliorate those risks. Id. at 886.

IV. ARGUMENT

The defendant 30 years old. He was born in Brooklyn, New York. He has resided in the Lawrence, Massachusetts area since coming to Massachusetts in 2000. He resides at 46 Pearl Street, Lawrence, Massachusetts with his mother, Manna Abreu and her boyfriend, Joel Maya.

The defendant believes that there are conditions, or a combination of conditions, which will reasonable assure his appearance and reasonably assure public safety. These conditions include, but are not limited to, for him to be on a GPS, with a restriction to stay in Massachusetts, a curfew from 8:00 PM to 6:00 AM seven (7) days a week, surrender of his passport; and an order to remain drug and alcohol free, subject to random screens. The defendant is amenable to whatever other conditions the Court deems appropriate.

V. CONCLUSION

Defendant, Garcia submits that the government failed to prove that there are no conditions or combinations of conditions which will reasonably assure the appearance of Defendant Garcia at future court hearings and that the government failed to prove that Defendant Garcia is a danger to the community and, therefore, the Order of Detention was improvidently granted.

WHEREFORE, the Defendant Garcia prays this Honorable Court will set aside the Order of Detention previously entered and set suitable conditions of release which are the least restrictive as required by 18 U.S.C. Section 3142, et seq.

Dated: February 23, 2017

RESPECTFULLY SUBMITTED
FOR DEFENDANT
BY HIS ATTORNEY

/s/Scott F. Gleason

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CERTIFICATE OF SERVICE

I, Scott F. Gleason, do hereby certify that I have this date filed a copy of the within Motion to Susan G. Winkler, Assistant United States Attorney, by way of electronic filing.

Dated: February 23, 2017

/s/Scott F. Gleason
Scott F. Gleason, Esquire